

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 809 of 1997****For Approval and Signature:****HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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DAHYABHAI KALUBHAI SOLANKI - Appellant**Versus****M/S. SHYAM INTERMEDIATES & 9 - Respondents**

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Appearance :

MR KP SHAH for Appellant : 1,

None for Respondent : 1-9,

MR MA PATEL ADDL pp for Respondent : 10,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**Date : 09/11/2006****ORAL JUDGMENT**

1.The Gujarat Water Pollution Control Board
through Dahyabhai Kalubhai Solanki, Assistant
Law Officer, has preferred this Appeal under

Section 378 of the Code of Criminal Procedure, 1973 (herein after referred to as 'the Code' for the sake of brevity) challenging the order of acquittal passed by the learned Chief Metropolitan Magistrate, Ahmedabad in Criminal Case No. 56 of 1993 on 7.11.1996, acquitting the present respondents - original accused of the offences punishable under Sections 24, 25, 43 and 44 read with Section 47 of The Water (Prevention and Control of Pollution) Act, 1974 (herein after referred to as 'the Pollution Act' for the sake of brevity).

2. This Court (Coram: N.J. Pandya, J.) on 1.9.1997 granted leave to appeal and admitted the Appeal. The same has been listed for final disposal today.
3. The facts in brief leading to filing this Appeal deserves to be set out as under.
4. The accused No. 1 is a factory, runs in the name and style as "Shyam Intermediates". The said factory in question was producing Venial Sulphon Acetic Acid, H.C.L. and other accused are Partners in the said firm. It is stated in the complaint that all the Partners were responsible for day to day affairs of the factory. The accused had applied for permission and consent on 23.2.1991 but the Board had declined the consent vide its letter dated 22.4.1991. The

accused were discharging excess effluents without the order prescribed under Sections 24 and 25 and therefore, the Authorized Officer had visited the factory on 2.9.1992. Before visiting the factory, the Officer of the Board Shri B.R. Gajjar issued Notice of Entry and Inspection to accused No. 9 - Rakeshbhai. In presence of Shri Rakeshbhai - accused No. 9, Shri Gajjar and Shri R.K. Gandhi had inspected the factory. During inspection, it appears that about 1 lac liters of effluents was discharged in Vinzol escape through PVC pipe, which was ultimately discharged in river Khari. It was noticed that polluted effluents was collected in a water tank and from that tank, through filter neuter, same was discharged through PVC pipe into Vinzol escape. Ruff sketch, wherefrom the effluents is being collected was prepared and signature of accused No. 9 was also obtained on that. Thereafter, the effluents was collected. After collecting the sample of effluents, it was informed to the accused No. 9 as to whether he is desirous of having it being divided into two parts and one part is being examined by the Public Analyst and on his wish not to divide the same into two parts in writing, the same was collected into a plastic cane and tag was attached thereto, which bears the address of the factory and date and time of the sample collected. etc. The sample effluents was sent to the analyst appointed by the Board, who had

opined on examining that sample effluents was not as per the prescribed parameters. The report of the Analyst dated 17.9.1992 was sent to the Member Secretary of the Board with the covering letter dated 30.9.1992. The accused No.1 was also served with the said letter along with report. The complaint came to be filed. The chargesheet Ex. 24 was filed against the accused and as they declined the charge, the trial had commenced. The prosecution witness - original complainant was examined at Ex. 3. The letter of authority for filing complaint is produced at Ex.3 for filing complaint. The Resolution empowering the Chairman of the Board for lodging the complaint is at Ex.5. It is stated by the complainant that he has filed the complaint on the basis of default dated statement, which is at Ex.6. The report is at Ex.8. The Court has also examined one prosecution witness Rameshbhai Gajjar at Ex.11, who had collected the sample from the factor. He has supported the complaint and the prosecution case. The case of the prosecution was put to the accused, who denied the same in their further statement Ex.313. After examining the evidence on record, the trial Court passed an order of acquittal acquitting the accused of the charges punishable under Sections 43 and 44 of the Pollution Act vide its order dated 7.11.1996, which is challenged in this present Appeal.

5. When the matter was called out, none has

remained present for the appellant. This matter is very old and awaiting its final disposal.

6. The appellant has enlisted grounds for Appeal in the memo of Appeal, wherein, it is contended that the order of acquittal being erroneous in law, the same deserves to be quashed and set aside. That the learned Judge ought to have appreciated that the accused were discharging the pollution water of their factory in the river Khari in contravention of the directives of the Board. That the learned Magistrate has erred in acquitting the accused holding that the mandatory provisions of the Act were not followed for taking samples of polluted water. The learned Magistrate has not considered the fact that no prejudice has been caused to the accused and they have also not brought on record as to how the prejudice was caused to them. That the learned Magistrate has erred in acquitting the accused though there was sufficient material on record to show that effluents which was discharged by the respondents was in contravention of the relevant provisions of the Act and the Rules made thereunder. That the learned Magistrate has erred in acquitting the accused looking to the documentary evidence and oral evidence produced by the complainant on the record of the case. That the learned Magistrate has erred in holding that prosecution has failed to establish that the accused No. 9 was

concerned and connected with the offence. The learned Magistrate has failed to consider that the accused No. 9 was found present at the factory and was looking after the working of the factory at the time when the officers visited the factory and collected the samples and this fact has not been challenged by the accused. On these grounds, the appellant has assailed the order of acquittal.

7. Though served, none has remained present for the respondents - original accused.

8. The record shows that the trial Court has mainly decided the complaint and acquitted the accused on account of noncompliance with the procedure in collecting the sample. The analyst has not been examined. The tag, which was available on the container containing effluents do not reflect the details which were required to be mentioned. It deserves to be noted that in the acquittal appeal, the order of acquittal ordinarily is not to be interfered with unless and until it is established beyond doubt that same is resulted into miscarriage of justice. If the order of acquittal is explained of being sustained on the reasoning different than the trial Court, if possible from the record then, the same should be sustained. In the present case, as it appears from the record that the complaint was filed by one Shri D.K. Solanki, Assistant Law Officer of the complainant Board

and he has stated before the Court in his testimony that he has no personal knowledge but he has filed complaint from the default sheet. He has stated that the Chairman of the Board had authorised him to file the complaint and the letter of authority is at Ex.4. The Chairman in term was authorised by the Board vide its Resolution, which is at Ex.5. It appears from the record and testimony of the complainant that he himself was not authorised by the Board and therefore, the trial Court has in fact acquitted the accused also on the ground that necessary sanction was not proper for lodging the prosecution against the accused and therefore, on this count also, the order of acquittal deserves to be sustained.

9. This appeal deserves to be dismissed on the sole ground that Section 49 of the Act provides as to how the cognizance of any offence is taken by the Court. Section 49 of the Act deserves to be set out as under :-

“Section 49 : Cognizance of offences : (1)

No court shall take cognizance of any offence under this Act except on a complaint made by -

(a) a Board or any officer authorised in this behalf by it; or

(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the

Board or officer authorised as aforesaid, and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first Class shall try any offence punishable under this Act].

2. Where a complaint has been made under Clause(b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person:

Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest.]

3. Notwithstanding anything contained in section [29 of the Code of Criminal Procedure, 1973 (2 of 1974)], it shall be lawful for any [Judicial Magistrate of the First Class or for any Metropolitan Magistrate] to pass a sentence of imprisonment for a term exceeding two years or of fine exceeding two thousand rupees on any person convicted of an offence punishable under this Act."

10. This Court (Coram: D.C. Srivastava, J.) in its unreported judgment in case of **M/s. Nicosulf Industries & Exports Pvt. Ltd. Vs. State of Gujarat** decided on 8.8.2006 in Criminal Appeal No. 241 of 2001 in terms has observed that the

authorisation for lodging the complaint as envisaged under Section 49 of the Act is only by the Board and any authorisation made by the Chairman was not a proper authorisation so as to sustain the prosecution and its validity. In that case also, the Board had placed reliance upon the Resolution dated 27th March, 1984, which has been reproduced by the Court in its decision. The delegation itself will not give power to the board to sanction prosecution in respect of offences committed under the provisions of Water Prevention and Control Act, 1974 and Rules made thereunder. This resolution and its tenor has been discussed in the case of M/s. Nicosulf (Supra) and it was observed that in absence of any document, the complaint filed by someone else under the authorisation by Chairman would not be competent and valid.

In the instant case also, the very Resolution of the Board dated 27.3.1984 appears to have been relied upon showing the powers of Chairman for sanctioning the prosecution as it is stated hereinabove. This Resolution has found to be not sufficient enough to enable the Assistant Law Officer to file complaint in respect of the offences committed under the Act. This being a binding judgment of this Court, the decision of acquittal deserves to be sustained. It deserves to be noted that in the instant case, the complaint was filed by the Assistant Law Officer

Shri D.K. Solanki, who had been authorised to file the complaint by the Chairman but the Chairman himself has been authorized to sanction the prosecution vide resolution of the Board dated 27.3.1984. Now as it is stated hereinabove, this is the very resolution, which was under challenge before this Court in case of M/s. Nicosulf (Supra). In view of this and couple with the fact that there is a finding with regard to non-compliance with mandatory provisions in respect of the Act in respect of collecting the sample, this Court is of the considered view that the order of acquittal does not call for any interference.

11.This being an acquittal appeal, the Court would ordinarily be slow in interfering with the order of acquittal, unless and until it is established by the appellant that the order impugned is being so perverse and illegal, which has resulted into miscarriage of justice and in absence of such plea and demonstration from the appellant, this court is not inclined to interfere with the order of acquittal.

12.In the result, the appeal is required to be dismissed and accordingly, the same is dismissed.

(S.R.BRAHMBHATT, J.)

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